

DRAFT

Virginia Commission on Youth
Study of School Enrollment Practices for Virginia's Kinship
Caregivers
Drafting Work Group

5th Floor East Conference Room
General Assembly Building
August 30, 2011
10:00 a.m.

MINUTES

Work Group Attendees:

Meg Bryce for Christie Marra, Jessica Eades, Cate Newbanks, Ellen Porter, Wendell Roberts, Michelle Vucci

Participating Electronically:

Angela Ciolfi for Lisa Bennett

Staff Attending:

Amy M. Atkinson, Leah Hamaker

Welcome and Introductions

Amy M. Atkinson, Executive Director

Ms. Atkinson welcomed the Advisory Group and asked the members and guests to introduce themselves.

Review of Legislative Draft

Discussion by Attendees

Ms. Atkinson stated that the Commission received several comments regarding the draft legislation that the Advisory Group formulated the June 7 Advisory Group meeting. Mr. Roberts inquired about the magnitude of this issue and asked whether it widespread enough to justify a legislative solution. Ms. Ciolfi responded that while there is no specific data about this issue, however, JustChildren deals with issue frequently during the course of the school year. She noted that in her locality, the issue prompted JustChildren to collaborate with Albemarle County schools to develop an affidavit and procedures for school enrollment.

Mr. Roberts stated that received many comments from a variety of schools across the Commonwealth. He noted the concern that many parents desire to enroll their children in particular school divisions for academic or sports benefits. This was a huge issue for many school divisions.

Ms. Ciolfi noted that the *Code of Virginia* already addresses this issue by making lying about residency for school attendance purposes a misdemeanor.

Jess Eades asked if local school divisions felt that they needed the legal authority to enroll these children. She suggested offering clear civil immunity to school divisions as an option to address this issue. The attendees stated their belief that this was not a barrier.

Ms. Eades proposed another possible solution as introducing legislation to amend the *Code* to direct the Department of Education (DOE) to develop a model policy for local school divisions and requiring local school divisions to adopt their own policies on this issue. Ms. Vucci stated that she would take this option to Dr. Wright and would report to the Advisory Group the Department's position on this option.

Mr. Roberts pointed out that the Commission's Study Plan noted a key issue not being the definition of terms surrounding school enrollment but the lack of a process for relative caregivers. He noted that in Ms. Newbanks' situation, she experienced problems because there was no process. Caregivers may attempt to enroll the child placed in their care in school but experienced problems because of the lack of an established process. Ms. Newbanks concurred with this observation.

Ms. Ciolfi asked if Mr. Roberts agreed that the starting point for determining residency was where the child was currently residing. The next step would then be proving that residency. Mr. Roberts disagreed that this was not always the starting point.

Ms. Eades stated that this issue seems to go back to the process. Ultimately, a school division's decision is based on certain factors set forth in the *Code of Virginia*. She asked whether replacing the terms "shall consider" with "may consider" in § 22.1-3 would help address concerns faced by school divisions. The Work Group indicated that this would not help clarify this issue. As school divisions were already trying to figure out how to enroll these children, the Work Group felt that this might not be helpful.

The Work Group discussion turned to the *Family Educational Rights and Privacy Act* (FERPA) and the *Individuals with Disabilities Education Act* (IDEA). It was noted that these laws emphasized that parents and legal custodians were the only parties authorized to act and receive information on behalf of the child. Ms. Ciolfi point out that § 22.1-213.1 paragraph 4 defines "parent" to be "an individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;..."IDEA also acknowledges "caregivers" in the statute.

Ms Newbanks stated that the Work Group should focus their attention on the issue of registering children in informal kinship care in school without having to pay tuition. The issues of IDEA and FERPA were beyond the purview of this study effort. The Work Group agreed with this assertion. In addition, she stated that this issue should be in the forefront of the draft legislation to emphasize this issue. This would enable children to be enrolled in school without fracturing families with custody orders solely for purposes of school enrollment. It was noted that the intent of custody orders was to protect children. Mr. Roberts pointed out that some school divisions do not offer tuition as an option.

Mr. Roberts noted that this issue was both a management issue and enrollment issues for school divisions. School divisions need to have flexibility to make these

determinations. Ms. Newbanks noted that this legislation should not be perceived as a mechanism to enroll children in school purely for school attendance purposes.

The Work Group reviewed the draft submitted by Christie Marra with the Virginia Poverty Law Center. She had reviewed the comments submitted by the Advisory Group and drafted a bill to attempt to address several of the concerns. She also included language from Lisa Bennett with JustChildren to address the issue of children residing part-time in the school division. She added #7 and #8 to § 22.1-3 of the *Code of Virginia*. The majority of the Work Group members liked the language contained in #7 but thought it should be moved to A.4 and added to the end of the sentence as (iii). The Work Group thought that the language in #8 should be deleted because it may cause confusion.

Ms. Eades suggested a third option, directing local school divisions to develop a process in determining residency. Looking at the Attorney Generals' opinions, both discuss the process for enrolling students. The Work Group believed that this option would be the most acceptable. Ms. Eades stated she would compose a draft bill with language that would: *require local school divisions develop a process to determine residency if the school division found the caregivers were acting in loco parentis due to a family event or circumstances that seriously impedes the parent's ability to care for the person*. The Work Group decided to bring three options to the Advisory Group on September 7. The three options are:

1. The legislation drafted by Christy Marra with the Virginia Poverty Law Center modified to move #7 to A.4 and delete #8;
2. Legislation drafted by Ms. Eades to direct school divisions to develop a process in determining residency and asking DOE to create a model policy to assist school division; and
3. Directing DOE to develop guidance on this issue to school divisions.

The Work Group concurred that they could best tackle this issue if they focused on the enrollment issue and did not address the management issues. The meeting adjourned at 10:55 a.m.